

CONTRACT No. A2110635



**Hennepin County Sheriff's Office
Communications Division
1245 Shenandoah Ln
Plymouth, MN 55447**

**Regionwide Public Safety Radio
Communications System**

Communications System Subscriber Agreement

Between Hennepin County and Authorized Users Regarding:
Use of the Regionwide Public Safety Radio Communications System,
Lease, Maintenance and Repair of Subscriber Radios,
Administrative and Operational Support of the Subscriber Radio Fleet

THIS AGREEMENT made and entered into by and between the COUNTY OF HENNEPIN, a body politic and corporate, under the laws of the STATE OF MINNESOTA, hereinafter referred to as the "COUNTY," A-2303 Government Center, Minneapolis, Minnesota 55487, the City of Maple Grove, 12800 Arbor Lakes Parkway North, Maple Grove, Minnesota 55369-7064, acting by and through its duly authorized officers, hereinafter referred to as the "USER".

WITNESSETH:

WHEREAS, the COUNTY operates a Local Subsystem as part of the Regionwide Public Safety Radio Communications System, hereinafter referred to as "System"; and

WHEREAS, the COUNTY has provided for the capability of Cities, Agencies, Districts and Other Authorized Users within the County to have access to the System; and

WHEREAS, the COUNTY bears primary responsibility for the health, security and integrity of the System and other communications systems;

WHEREAS, the USER has elected to participate as a subscriber with end user radios operating on the System; and

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the COUNTY and the USER agree as follows:

1. PURPOSE AND INTRODUCTION

The purpose of this Agreement is to define the rights and obligations of the COUNTY and the USER with respect to the cooperative and coordinated purchase, lease, maintenance, technical and administrative support and use of portable, mobile, desktop and other end user radios by the USER on the COUNTY's System.

The System is a multi-site general purpose wireless communications system designed to provide, among other things, 95% area coverage reliability for portable radio operation above ground level in light to medium buildings throughout most of the County. Other USER benefits and services include, access to a statewide public safety radio communications system, multiple system redundancies with backup power, a wide range of talk groups, electronic identification of all radios on all transmissions, 99.999% microwave system reliability, encryption availability, system security, radio interoperability, 24 hour a day system monitoring and repair response, access to a pool of special event radios and USER radio user training.

2. DUTIES AND RESPONSIBILITIES OF USER

2.1 Conformance to Statewide Emergency Communications Board (SECB), Metropolitan Emergency Services Board (MESB) and COUNTY Standards

USER agrees to be aware of and conform to all applicable standards, policies, procedures and protocols established or amended by the SRB, MESB and COUNTY related to use of the System including but not limited to System supported radios and equipment, radio user training requirements, radio operating guidelines, audit, monitoring and compliance.

2.2 Conformance to Federal Laws and Regulations

USER agrees to be aware of and conform to all applicable Federal Rules, Regulation and Laws pertaining to use of the System including but not limited to the Communications Act of 1934 as Amended and Part 90 of the Federal Communications Commission Rules and Regulations.

2.3 Response to Improper Use

In the event COUNTY informs USER that statistical analysis of System usage or other information indicates that USER personnel may have inappropriately used the System, or may have violated standards, policies, procedures, rules, regulations or laws regarding proper operation of the System, or may have violated the provisions of this Agreement, USER agrees to take immediate and appropriate investigative and corrective action to stop the violation and eliminate any reoccurrence.

2.4 Radio and Equipment Lease Fees

USER agrees to pay to COUNTY all lease fees assessed to USER by COUNTY throughout the lease term in accordance with a lease policy established by the Board of Hennepin County Commissioners for end user radios or other related equipment furnished to USER by COUNTY under this Agreement. The specific lease fee schedule established by COUNTY and the list of equipment leased by USER shall be detailed in Appendix A attached hereto, and such Appendix A shall be made a part of this agreement.

2.5 Subscriber Fleet Support Fees

USER agrees to pay COUNTY all Subscriber Fleet Support Fees assessed to USER by COUNTY in accordance with a cost recovery policy established by the Board of Hennepin County Commissioners for costs including but not limited to programming, software updates, technical support, administrative support, configuration support, access to the special event shared pool of radios, training support and other costs attributable to USER's participation under this Agreement. The Subscriber Fleet Support Fees as stated in Appendix A.

2.6 Maintenance and Repair Fees

USER agrees to pay COUNTY all fixed fees for Tier 1 maintenance and repair services; time and material charges for consumables and repairs not covered under Tier 1 service. The Tier 1 Maintenance and Repair Fees as stated in Appendix A.

2.7 Pass Through Metropolitan Emergency Services Board User Fees

USER agrees to pay to COUNTY all user fees attributable to USER assessed to the COUNTY by the MESB, or its successor entity if applicable. The MESB user fees are set forth in Appendix A.

2.8 Invoicing and Payment Terms

COUNTY will invoice USER monthly, or at other intervals as mutually agreed to in writing, for all fees specified herein. Principal charges for leased equipment will commence when the COUNTY is invoiced by the equipment supplier. All other fees specified in this Agreement will commence as follows: For radios activated on or before the 15th of the month, USER will be charged for the entire month. For radios activated after the 15th of the month, the fees will commence on the first day of the following month. Payment of all fees herein shall be made directly to the COUNTY in accordance with state and federal law governing the payment of claims and/or invoices.

2.9 Flow Down Metropolitan Emergency Services Board Contract Provisions

USER agrees to comply with all applicable flow down provisions set forth in Appendix A.

2.10 Provisional Use of USER Purchased and Owned Radios and Radio Software

USER may utilize radios purchased and owned by USER on the System provided that such USER's radios and equipment shall be pre-approved for support by COUNTY. COUNTY shall have no obligation to support, maintain, or repair radios or equipment that are not pre-approved. Non-certified radios, or radios operating with non-certified software versions will not be allowed to access or use the System. If USER acquires radios or equipment that are not pre-approved, either party may immediately terminate this Agreement.

2.11 De-certification and Disposition of Obsolete Radios

The SECB (Statewide Emergency Communications Board), MESB and/or COUNTY may de-certify

previously pre-approved radios, equipment, and/or radio operating software versions which become obsolete for reasons including but not limited to: become unsafe to use, impair System performance, are no longer supported by the radio Manufacturer, are no longer supported by the COUNTY, exhibit substantial defects, exhibit performance deficiencies, impair implementation of System upgrades, become unreliable, become economically unfeasible to maintain, etc. De-certified radios, equipment, or radios operating with de-certified software versions will not be allowed to access or use the System. USER agrees to dispose of obsolete radios, batteries and other equipment in accordance with applicable laws and rules regarding disposal of hazardous materials.

2.12 Limitation of Radio Programming, Radio Code Plug Programming Files and System Key File

Regardless of ownership, all radios on the System shall be programmed only by the COUNTY, and the COUNTY shall retain an archived electronic copy of all radio code plug programming files and encryption keys files installed in all USER radios covered under this Agreement. The configuration of all radio code plug programming files and radio templates shall be subject to approval by the COUNTY before the radios will be activated on the System. All radio code plug programming files, system key files and encryption key files are the sole property of the COUNTY, and contain information that is classified as security information and non-public government data. Unless specifically authorized by the COUNTY in writing, USER may not directly or indirectly, or permit any third party to: view, read, print, extract, copy, archive, edit, create, clone, transfer, tamper with or otherwise compromise the security of any radio code plug programming file, system key file or encryption key file for any radio on the System. In the event USER learns that any party has improperly or fraudulently obtained radio code plug programming file information, system key file or encryption key file, USER will immediately notify COUNTY of the security breach.

2.13 Payment for Damaged Radios

USER agrees to promptly pay COUNTY for all costs incurred to repair radios damaged for any reason, excluding normal wear and tear which is included in the COUNTY's maintenance program, and also excluding damage which occurs while the radios are in the possession of COUNTY.

2.14 Risk of Loss for Lost, Stolen or Destroyed Radios

USER assumes full risk of loss for COUNTY provided radios assigned to USER including special event and repair loaner radios temporarily assigned to USER which are lost, stolen, physically un-repairable or destroyed for any reason excluding damage which occurs while the radios are in the possession of COUNTY. USER will be invoiced, and agrees to pay, the remaining amount of the non-depreciated lease balance, for any lost, stolen or destroyed radios. Assessment of subscriber fleet support fees and Tier 1 fixed maintenance fees will be terminated upon such payment.

2.15 Notification to COUNTY of Lost or Stolen Radios

USER agrees to immediately notify COUNTY of any missing, lost or stolen radios, so the radio can be deactivated on the system.

2.16 Radios Not Economical to Repair

A USER radio which is covered under the annual Tier 1 fixed fee maintenance and repair services program listed in Appendix A which has malfunctioned, broken or failed, excluding a radio that is damaged, lost, stolen, destroyed or physically un-repairable as described in sections 2.13 and 2.14 above, and which the COUNTY determines cannot be economically repaired, by mutual agreement shall (1) be considered an obsolete radio, deactivated and terminated from the maintenance program with no additional fees payable by USER except the outstanding balance of fees due for services rendered before the radio was deemed not economical to repair (2) Considered an obsolete radio, deactivated and terminated from the lease program with no additional fees payable by USER. In the event the replacement option is chosen, the used replacement radio may, at COUNTY's option, be reconditioned or rebuilt from salvaged parts and the COUNTY shall retain or assume ownership of the original failed radio and such radio may be salvaged for spare parts, rebuilt or otherwise disposed of by COUNTY. Further, if the failed radio is a COUNTY owned radio leased to USER, and the deactivate and terminate lease option is chosen, the COUNTY shall also retain ownership and disposition rights of the failed radio.

2.17 Assignment of Leased Equipment

USER may terminate in whole or part the lease of radios or other equipment under this Agreement provided USER assigns the leased equipment in writing to another authorized user who has a subscriber agreement in effect with the County and further provided that the Assignee agrees in writing to make all applicable payments to COUNTY including the remaining lease payments.

2.18 Prepayment of Leased Equipment

USER may pay off the remaining amount of the non-depreciated lease balance, at any time during the lease term without any additional prepayment penalty. Title to the leased equipment shall transfer to the USER upon such payoff subject to the provisions of Section 3.2.

3. DUTIES AND RESPONSIBILITIES OF COUNTY

3.1 Furnishing of End User Radios

COUNTY will periodically solicit orders for new, additional and replacement radios from USER. This will normally occur on an annual basis, however USER may request radios at any time. Subject to budget availability and approval by the Board of Hennepin County Commissioners, on USER's behalf COUNTY will purchase radios, receive, inventory, inspect, test, program and install radios as requested by USER. COUNTY will assist USER in selecting and ordering radios that are purchased directly by USER for use on the System.

3.2 Financing of End User Radios and Transfer of Title

Subject to budget availability and approval by the Board of Hennepin County Commissioners, COUNTY will finance the purchase of radios for USER's Public Safety operations (police, fire, EMS or Emergency Management) as requested by USER. The equipment lease period shall be for the expected useful life of the equipment, as determined by COUNTY and listed in Appendix A. The combined equipment will be depreciated over the lease period. Upon completion of payment of all principal to COUNTY, and execution by USER of any applicable Software License Agreements or Assignment of Rights Agreements regarding use of embedded software, COUNTY shall transfer title to the leased equipment to USER.

3.3 Radio Maintenance and Repair Services

In accordance with the provisions herein, COUNTY will provide one tier of maintenance and repair services for USER radios. Tier 1 service will be provided at a fixed annual fee determined by the COUNTY and may be based on the model and age of the radio. Tier 1 service includes access to the shared pool of repair loaner radios. The fixed annual fee for Tier 1 service includes all parts, labor and other costs to provide maintenance and repair for internally malfunctioning radios and normal wear and tear. Normal wear and tear is anticipated degradation which normally occurs to the equipment in the regular course of work for the job position, assuming the user takes reasonable care and precaution. Tier 1 service excludes consumables such as batteries and antennas, and excludes radio accessories. Repairs beyond internal malfunctions and normal wear and tear including damage caused by negligence or accidental damage such as fire, water immersion, crushing, dropping from a moving vehicle, etc., and consumables will be assessed on a time and materials basis in addition to the fixed annual Tier 1 maintenance fee. Unless specifically excluded by COUNTY, all radios assigned for public safety operations on the System under this Agreement, regardless of ownership, will be provided with Tier 1 maintenance service by COUNTY and will be allocated the annual fixed costs.

3.4 Repair Loaner and Special Event Radios

COUNTY will maintain a fleet of radios which will be made available to USER, generally on a first come first serve basis, for temporary assignment for special events, response to emergencies, or other similar events. USER may receive a temporary loaner radio to replace a radio taken out of service for maintenance or repair if the failed radio is covered under the Tier 1 annual fixed fee maintenance and repair services program listed in Appendix A. If there are more requests for loaner radios than can be accommodated, the COUNTY will prioritize allocations and may require that USER return repair loaner

and special event radios early.

3.5 Allocation of System Resources

COUNTY will allocate to USER, by mutual agreement, sufficient System resources including but not limited to; Talk Groups, Radio Unit IDs, Alias IDs, etc. in order to provide USER with an equivalent grade of service afforded to other comparable System users.

3.5 Monitoring of USER Talk Groups

COUNTY will periodically monitor talk groups allocated to USER for USER's internal use for system management purposes including but not limited to maintenance, troubleshooting, system performance assessments, unusual traffic patterns (sudden jump in usage), policy and procedure compliance checks, etc. COUNTY monitoring of USER's talk groups may occur at any time, for any duration, may be without notice and is subject to recording.

3.7 Radio Operator Training

COUNTY will provide USER with access to end user radio training instructional materials provided to COUNTY from the SRB, MESB or other sources. For the deployment of immediate and near term radios as defined in the COUNTY's Radio Purchasing and Deployment Plan adopted by Board Resolution No. 01-622R2, attached as Appendix B, COUNTY will assist USER in training USER's personnel by providing a COUNTY radio trainer (or trainers) to work in conjunction with a USER provided trainer (or trainers) to deliver training to USER's radio operators. Once the near term deployment is completed, USER will have primary responsibility for training new employees and for providing refresher training.

3.8 Database Administration

COUNTY will manage and administer the System database records containing the information related to inventory, configuration, programming history, software version control, radio IDs, service levels, statistical usage analysis, etc. for USER's subscriber radios used on the System.

3.9 Radio Station Licenses

COUNTY shall hold and administer all FCC licenses on behalf of all users of the System. USER shall operate as authorized mobile, portable and control station units under the COUNTY's FCC radio station licenses.

4. TERM AND CANCELLATION

4.1 Term of Agreement

This Agreement shall be for an initial term of five (5) years beginning on the date executed by the COUNTY through December 31, 2025. After the initial term and any subsequent extensions thereto, this Agreement will automatically be extended for an additional one (1) year term, for up to a maximum of three (3) of one (1) year terms beyond the initial term of the five (5) years ("Renewal Term"), unless either party gives written notice of intent not to extend to the other party, at least one hundred twenty (120) days prior to the expiration of the then current term.

4.2 Cancellation of Agreement

This Agreement may be canceled with or without cause by either party upon one hundred eighty (180) days' written notice, provided that any such cancellation by COUNTY shall require action by the Board of Hennepin County Commissioners.

4.3 Actions Upon Termination

Upon expiration or cancellation of this Agreement as provided for herein, USER shall cease all use of the System including using the system with radios owned by USER.

5. MERGER AND MODIFICATION

5.1 Entire Agreement

It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

5.2 Amendments to Agreement

Any alterations, variations, modifications, or waivers of provisions of this Agreement, except for revisions to Appendix A as provided for below, shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

6. DEFAULT

6.1 If either party fails to perform any material term of this Agreement, this failure shall be addressed in accordance with the Contract Disputes Act.

6.2 The failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.

6.3 If either party terminates agreement due to default, USER shall return all equipment for deprogramming. Following deprogramming activities COUNTY shall return all equipment to USER. User shall pay COUNTY the remainder of the balance of the original cost of the leased equipment which has not been recovered under lease payments. USER shall cease all use of COUNTY's System.

7. MISCELLANEOUS PROVISIONS

7.1 Independent Parties

It is mutually understood that this Agreement does not create an employment relationship between the parties, nor does it create a partnership or joint venture, nor does it constitute a cooperative agreement or joint powers agreement.

7.2 Liability

Each party agrees that it will be responsible for its own acts and the results thereof, to the extent authorized by law, and shall not be responsible for the acts of the other party and the results thereof.

7.3 Data Privacy

To the extent applicable under federal and state law, USER, its officers, agents, owners, partners, employees, volunteers or subcontractors agree to abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended.

7.4 Records – Availability/ Access

To the extent applicable under federal and state law, subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5 (as may be amended), the USER agrees that the COUNTY, the State Auditor, the Legislative Auditor or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the USER and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the contract and for six (6) years after its termination or cancellation.

7.5 Contract Administration

In order to coordinate the services of the USER with the activities of the COUNTY so as to accomplish the purposes of this contract, the party(s) named on the Delegation of Authority for Contracting Officers Technical Responsibilities as provided by User, shall manage this contract on behalf of the USER and serve as liaison between the COUNTY and the USER.

7.6 Notices

Any notice or demand which must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the Office of the County Sheriff at the address given below. Notice to the USER shall be sent to the address stated below.

To COUNTY: Hennepin County Administrator
A-2303 Government Center
Minneapolis, MN 55487

Copy to: Radio Systems Manager
Hennepin County Sheriff's Office
Communications Division
1245 Shenandoah Ln
Plymouth, MN 55447

USER: City of Maple Grove
12800 Arbor Lakes Parkway North
Maple Grove, MN 55369-7064

ATTN: Chief Eric Werner
Chief Tim Bush

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COUNTY ADMINISTRATOR APPROVAL

USER, having signed this contract, and the County having duly approved this contract on the ____ day of Apr 16, 2021, _____, and pursuant to such approval, the proper County officials having signed this contract, the parties hereto agree to be bound by the provisions herein set forth.

Reviewed by County Attorney's Office

By: Mike Bernard
Michael Bernard

Date: Apr 14, 2021

Hennepin County Sheriff's Office

By: Tracey Martin
Tracey A. Martin
Chief Deputy

Date: Apr 15, 2021

Document Assembled by:

By: Kristine Urbowicz
Kristine Urbowicz

Date: Apr 8, 2021

COUNTY OF HENNEPIN STATE OF MINNESOTA

By: David Hough
David Hough
County Administrator

Date: Apr 16, 2021

By: Sheri Selton
Sheri Selton
County Administration Clerk

Date: Apr 16, 2021

USER

By: Heidi Nelson
Heidi Nelson
City Administrator

Date: April 5, 2021

Hennepin County Sheriff's Office
Communications Division

Appendix A

**Communications System Subscriber Agreement
Appendix A: 2021 Annual Subscriber Fees**

Device Type & Support Level	HC Subscriber Fleet Support Fee ¹	MESB Fee ²	State PTID Fee ³
Tier 1 – All Radios	\$286.32	\$8.28	
Admin Only – All Radios	\$18.60	\$8.28	
Mobile Data Computer	\$537.24	\$0.00	\$360.00
Tri-Tech Software License fee (Field Ops)	\$180.00		
Tri-Tech Software License fee (Desktop)	\$35.00		\$360.00

¹ Note: Currently billed as "Radio Fleet Fee" or "MDC Support Fee." Tier 1 Subscriber Fleet Support Fee includes programming, maintenance, repair, software updates, technical support, database and configuration support, access to the special event shared pool of radios, repair loaners, training support, and other costs attributable to supporting the radio fleet. Fleet Support Fee for Consolettes (base radios) only covers maintenance and repair on the radio unit, it does not include parts for or repair of desktop remotes, wiring for remotes, antennas or antenna feedline. Tier 2 is no longer available. Admin only is available only when specifically authorized through cooperative agreement.

The annual fixed price MDC fleet support fee includes: (1) All Core Software Support services described in the MDC Fleet Support Amendment to the Subscriber Agreement; (2) Diagnosis of hardware failures, including GPS receivers and commercial air cards. (3) Switching to repair loaner hardware; (4) Processing of hardware covered under manufacturer's warranty or extended service plan; (5) Software setup for new and replacement MDCs (excluding installation in vehicle).

² MESB Fee is a pass-through fee assessed by the Metropolitan Emergency Services Board for its radio related administrative expenses.

³ State PTID Fee is a pass-through fee assessed by the State of Minnesota for access to State Criminal Justice Database. This fee is ONLY charged for MDCs and desktops requiring this access.

Hennepin County Sheriff's Office
Communications Division

Communications System Subscriber Agreement Appendix A:
2021 Time and Materials Charges

Hourly Rates

Communications Technician	\$50.00
Software Technician	\$105.00
Lead Communications Technician	\$60.00
Communications Engineer	\$69.00

Parts, Accessories, Batteries and Other Equipment

Cost Plus 10% Markup for Administrative Costs

External Contractor Repair Services

Cost Plus 10% Markup for Administrative Costs